

DECISION MEMORANDUM

TO: COMMISSIONER KEMPTON
COMMISSIONER SMITH
COMMISSIONER REDFORD
COMMISSION SECRETARY
COMMISSION STAFF

FROM: DON HOWELL
DEPUTY ATTORNEY GENERAL

DATE: AUGUST 12, 2009

SUBJECT: IDAHO POWER COMPANY'S APPLICATION FOR AN ACCOUNTING
ORDER TO RECORD A POSSIBLE REVENUE DEFICIENCY FROM ITS
TRANSMISSION OPERATIONS, CASE NO. IPC-E-09-21

On July 20, 2009, Idaho Power Company filed an Application requesting that the Commission issue an accounting order authorizing the deferral of costs associated with the Company's transmission services. The Company is requesting authority to record and possibly recover in Idaho rates its unrecovered transmission costs following a recent transmission rate case before the Federal Energy Regulatory Commission (FERC), Docket No. ER06-787. The Company requests that its Application for an accounting order be processed under Modified Procedure.

BACKGROUND

In March 2006, Idaho Power filed an application with FERC requesting an increase in its transmission rates subject to FERC's jurisdiction. In its filing, the Company proposed to revise its Open Access Transmission Tariffs (OATT) from "stated" rates to "formula" based rates. Formula rates would be updated annually based upon Idaho Power's total cost to own, operate and maintain its transmission facilities for its transmission customers. *Order on Initial Decision*, 126 FERC ¶ 61,044 (Jan. 15, 2009). The "formula" rate methodology would allow annual adjustments to Idaho Power's FERC-jurisdictional transmission rates, based upon financial and operating data reported annually in the Company's FERC Form 1.

In its FERC application, the Company noted that it had not adjusted transmission rates since 1996. Nevertheless, several of the Company's transmission customers opposed the

FERC rate application. Although the parties settled most of the issues, they were unable to resolve the proper ratemaking treatment of the “Legacy Agreements.” *Id.* at ¶ 11.

Starting in the 1960s, Idaho Power entered into three long-term transmission service contracts (commonly referred to as the “Legacy Agreements”) with PacifiCorp to provide transmission service from the Jim Bridger power plant in western Wyoming. Idaho Power and PacifiCorp jointly own the Bridger facility. Both companies built and now operate transmission power lines from Jim Bridger to their respective service territories. Under the terms of the Legacy Agreements, Idaho Power charges PacifiCorp “use of facility fees” to use Idaho Power’s transmission facilities until 2025. *Id.* at ¶¶ 3-9.

The FERC administrative law judge (ALJ) initially determined and the entire Commission affirmed that Idaho Power’s charges to PacifiCorp under the Legacy Agreement are significantly lower than the OATT rates Idaho Power proposed to charge other customers for transmission service. This rate “disparity” between the old Legacy Agreements and the OATT rates has grown over time. ¶ 127. The ALJ further found that under the Legacy Agreements, PacifiCorp’s load accounted for 40% of the transmission lines’ capacity, Idaho Power’s load accounted for 45% of the capacity, and third-party transmission customers accounted for only 15% of the total firm capacity of the affected Idaho Power facilities. *Id.* at ¶ 128. Based upon the principles of cost causation and allocation, the Judge found that it was unreasonable for Idaho Power to shift its proposed rate increase to its third-party transmission customers. Because of the longstanding Legacy Agreements, Idaho Power is contractually bound to provide transmission service to PacifiCorp at rates that are now considered below cost.

In affirming the ALJ, FERC found that Idaho Power cannot require its third-party OATT transmission customers to pay more than their prorate load share of Idaho Power’s total transmission revenue requirement. *Id.* at ¶ 133. Because its revenue recovery is “locked in” by the long-term Legacy Contracts, FERC found that Idaho Power must bear the under-recovery of transmission revenue on its own. *Id.* at ¶ 129.

The intervenors in the FERC docket also argued that Idaho Power has other options to make up for the revenue shortfall. The Company could avail itself of provisions in the Legacy Agreements that allow some transmission charges to be adjusted. *Id.* at ¶ 163. In addition, the ALJ observed that Idaho Power could seek to recover its revenue shortfall from its retail customers. *Id.* at ¶ 158. He determined that Idaho Power “has other ways to lessen any financial

blow . . . through appropriate rate changes at the retail level or through re-negotiations of its legacy agreements with PacifiCorp.” *Id.* at ¶ 218.

THE PRESENT APPLICATION

In response to FERC’s Initial Decision, Idaho Power has taken three actions. First, on February 27, 2009, Idaho Power filed a Petition for Rehearing with FERC. On March 18, 2009, FERC granted rehearing so it could consider that matter in greater detail. Docket No. ER06-787-006. Second, Idaho Power has initiated actions to amend portions of the Legacy Agreements which are subject to change or re-negotiation. Finally, Idaho Power has filed the present Application with this Commission for an accounting order to recover no more than \$8,084,251 from the Company’s retail jurisdiction for the period March 2008 through May 31, 2010. Application at ¶ 9. If Idaho Power is otherwise able to reduce its revenue shortfall by pursuing the first two alternatives, then the Company “will reduce the deferral request.” *Id.*

Consequently, the Company seeks an accounting order authorizing the deferral of the unrecovered transmission-related costs associated with the outcome of FERC’s Initial Decision. The Company proposes to amortize the unrecovered transmission revenues on a straight-line basis over a 36-month period beginning June 1, 2010, once these costs are included in rates. *Id.* at ¶ 10. Idaho Power proposes to account for the unrecovered transmission revenues by charging them to Account 182.3 (Other Regulatory Assets) and amortizing these amounts to Account 407.3 (Regulatory Debits) upon their inclusion in rates. Until such time as the Company begins to recover its deferred costs, it requests that the Commission authorize a carrying charge on the deferral balance based upon its latest authorized rate of return on rate base (8.18% per Order No. 30722). *Id.* at ¶ 11.

STAFF RECOMMENDATION

Staff is in the process of reviewing the Company’s Application. Although Staff has several issues with the Application, Staff believes that this matter may appropriately be processed under Modified Procedure. Consequently, Staff recommends that the Commission issue its Notice of Application and Notice of Modified Procedure requesting comments in 28 days. The Company may file reply comments 14 days later.

COMMISSION DECISION

Does the Commission agree with the Company and Staff that this matter is appropriate for Modified Procedure?

A handwritten signature in black ink, appearing to read "Don", is positioned above a horizontal line.

Don Howell
Deputy Attorney General

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